IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 782 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ISHVERBHAI UMEDBHAI

Versus

SHIVRAM SHANKARDAS

Appearance:

MS SHRUTI D TRIVEDI WITH
MR SN SHELAT for Petitioner No. 1
UNSERVED-EXPIRED (N) for Respondent No. 1
RULE SERVED for Respondent No. 1/1-1/2
DELETED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE KUNDAN SINGH

Date of decision: 05/11/2003

ORAL JUDGEMENT

1. This Civil Revision Application has been preferred against the judgment and decree dated 30-4-1986 passed by the Extra Assistant Judge, Surat, allowing Regular Civil Appeal No. 26 of 1984 and directing the petitioner to hand over vacant and peaceful possession of the suit premises to the plaintiff respondent no. 1 herein and maintaining the judgment and decree dated 30-4-1983 passed by the Judge, Small Causes Court, Surat in Small Causes Suit No.837 of 1978 and terminating the tenancy of the defendants no. 1 and 2 and 3 herein.

2. The plaintiff - respondent no. 1 is the owner of the suit property situated in Dhoriyawad, Salavatpura, Surat. He constructed an industrial shed in the suit property and Industrial Shed No. 6 was let out to the defendants no.1 and 2 on monthly rent of Rs.135/-. It was agreed that the defendants no. 1 and 2 would not sub-let or sell to any other other person and rent was payable on first day of every calender month. The defendants no. 1 and 2 have unlawfully sub-let the suit property to the defendant no. 3 - petitioner herein. The defendants no. 1 and 2 had filed Regular Civil Suit No. 74 of 1977 for rent against the defendant no. 3 at the rate of Rs.385/- p.m. Thus, the defendants no. 1 and 2 are also making profit by subletting the suit property to the defendant no. 3 and hence the aforesaid Small Causes Suit was filed against the defendants no. 1 to 3 for recovery of possession of the suit property on the ground of unlawful subletting and also on the ground that the defendants no.1 and 2 are not paying rent regularly as well as on the ground of arrears of rent of more than six months was due on the date on which the demand notice was issued to the defendants. It is also stated that the defendants no. 1 and 2 have made permanent construction on the suit property and damaged the walls and they have caused damage to the suit property and Rs.1000/- remained due as rent for the period from 1-1-1978 to 31-7-1978. Hence, the notice dated 21-7-1978 was served on the defendants no. 1 and 2 and tenancy was terminated from the defendants no. 1 and 2. Therefore, the aforesaid suit was filed for recovery of vacant and peaceful possession of the suit premises.

3. The defendant no. 1 filed written statement exh.15 stating therein that he is the tenant of the suit property on monthly rent of Rs.125/-. He has also admitted that the rent from 11-8-1978 was due and permanent structure was made in the suit property and he

has not given any reply to the demand notice.

4. the defendant no. 3 filed his separate written statement exh. 22 stating therein that the suit is not maintainable and is filed in collusion with the defendants no. 1 and 2. The defendant no. 3 denied knowledge of the premises and tenancy with the defendants no. 1 and 2. The defendants no. 1 and 2 sublet the suit property to the defendant no. 3 and the defendant no. 3 was regularly paying rent to the defendants no. 1 and 2. This fact was known to the plaintiff since several years but he had never objected to this type of subletting. He also denied that there is permanent structure in the suit premises constructed by the defendant no. 1 and also denied arrears of rent. There is no cause of action for filing the suit. Alternatively, the defendant no.3 stated that the suit property along with the 8 power looms, 2 motors, 1 milling machine, 1 holemachine and 8 dobby were let out to the defendant no. 3 on monthly rent of Rs.385/- since S.Y. 2028. Since long, he is paying rent regularly to the defendants no. 1 and 2. Afterwards 2 dobby's are taken away by the defendant no. 1. He stated that Rs.385/- p.m. is not standard rent of the suit property. The plaintiff had given notice dated 11-11-1975 to the defendants no. 1 and 2 and the same was received by the defendant no. 3 and it was replied by the defendant no. 3 on 23-11-1975. Third notice was given on 25-11-1975 by the plaintiff wherein it is stated that the defendants no. 1 and 2 have surrendered tenancy in favour of the plaintiff by selling machinery lying in the suit property and the defendants no. 1 and 2 have transferred their right of recovery of right from the defendants no. 3. The plaintiff has admitted that the defendants no. 1 and 2 have got right of sub-tenancy and the notice was just like attornment notice. The defendant no. 3 has given reply on 5-12-1975. The plaintiff has also replied on 13-12-1975. Thereafter on 12-6-1975 another notice was given whereby the defendant no. 3 was acknowledged as tenant and in possession as well as arrears of rent was demanded and again the notice dated 26-12-1976 was given for arrears of rent and then notice dated 11-1-1977 was sent by the defendant no.3 to the defendants no. 1 and 2. Thereafter, the defendants no. 1 and 2 filed Suit against the defendant no. 3 on 20-1-1977 and that suit was withdrawn on 31-12-1977. Thereafter, another notice was given and reply was on 15-8-1978. The plaintiff withdrew all the notices and accepted defendant no. 3 as a tenant. Now, when the defendant no. 3 was lawful sub-tenant and the plaintiff has purchased machinery from the defendants no. 1 and 2 and tried to take possession

from the defendant no. 3. Thus, the defendant no. 3 was lawful tenant with consent and knowledge of the plaintiff. Tenancy of the defendants no. 1 and 2 have already been terminated the defendant no.3 has directly become the tenant of the suit property. Standard rent of the suit property be fixed.

5. The trial Court framed following nine issues for its determination :

i. Whether defendants no. 1 and 2 have unlawfully sublet the suit premises or have unlawfully transferred or assigned their interest therein to defendant No.3?

Finding of the trial Court to this issue is that subletting of the shed by the defendants no.1 and 2 in favour of the defendant no. 3 was legal and valid. Hence, issue no. 1 was decided in negative.

ii. Whether defendants no. 3 proves that he is lawful subtenant and is entitled to become tenant of the plaintiff ?

The trial Court recorded its finding that the defendant no. 3 is now direct tenant of the plaintiff's shed no. 6 on monthly rent of Rs.135/-.

iii. Whether defendants no. 1 and 2 are unlawfully profiteering and charging more than standard rent from defendant no. 3 ?

The trial Court held that the defendants no. 1 and 2 are liable to be evicted and their tenancy is terminated because of profiteering by subletting and they are charging more than standard rent from the defendant no.3.

iv. Whether this suit is fraudulent or collusive ?

The trial Court decided this issue in the affirmative.

v. Whether the defendant is a tenant-in-arrears of rent ?

The trial Court held that the defendants no. 1 and 2 are in arrears of rent for more than six

months on the date of demand notice.

vi. Whether the defendant is ready and willing to pay rent ?

The trial Court held that the defendants no. 1 and 2 were not ready and willing to pay rent due and they are liable to be evicted from the suit premises. The defendant no. 3 is affected by the conduct of the defendants no. 1 and 2 and possession of the defendant no. 3 is protected.

vii. Whether the plaintiff is entitled to recover possession of the suit premises?

The trial Court held that the plaintiff is not entitled to recover possession of the suit premises from the defendant no. 3. As far possession of defendants no. 1 and 2, the plaintiff is entitled to recover possession from defendants no. 1 and 2 for profiteering by subletting and for non-payment of rent but, so far as defendant no. 3 is concerned, his possession will retain undisturbed and he will become a direct tenant of the plaintiff.

6. Being aggrieved by the judgment and decree of the trial Court, the respondent no. 1 herein filed Regular Civil Appeal No. 26 of 1984 before the District Court, Surat. Thereafter, the original defendants no. 1 and 2 filed cross-objections in the said appeal. the Extra Assistant Judge, Surat allowed the said appeal vide judgment and order dated 30-4-1986 modifying the judgment and decree of the trial Court directing the eviction against the defendant no.3 - petitioner herein and to hand over vacant and peaceful possession of the suit property to the original plaintiff.

7. The lower appellate Court also framed following points for its determination.

i. Whether the defendant no. 3 is a lawful sub-tenant of the suit premises ?

The answer of the lower appellate Court is in affirmative.

ii. Whether the defendant no. 3 has become tenant u/s 14 of the Bombay Rent Act ?

Answer of the lower Appellate Court to

this point is in negative.

iii. Whether the defendants no. 1 and 2 are unlawfully profiteering and charging more than standard rent from the defendant no.3 ?

The lower appellate Court answered this point in negative.

iv. Whether the suit is fraudulent or collusive ?

The lower appellate Court recorded its finding to this point in affirmative.

v. Whether the defendants no. 1 and 2 in tenant of arrears of rent ?

The lower appellate Court also recorded its finding to this point in affirmative.

vi. Whether the defendants no. 1 and 2 are ready and willing to pay the rent ?

The finding of the lower appellate court to this point is in negative.

vii. Whether the plaintiff is entitled to the decree of eviction against all the defendants ?

The lower appellate's finding to this point is "Yes".

viii. Whether the plaintiff is entitled to decree of eviction against the defendant no. 3 also "

The finding of the lower appellate Court to this point is also "Yes".

8. Heard the learned counsel for the parties and perused relevant material on record.

9. The contention of the learned counsel for the petitioner is that the petitioner has been treated as direct tenant of the machinery by the lower appellate Court. It has been held by the both Courts below that the petitioner is admittedly a sub-tenant as per the contract between the defendants no. 1 - 2 and 3. It is

also submitted by the learned counsel for the petitioner that the petitioner is direct tenant of the suit property as held by the trial Court. Hence, the lower appellate Court has committed an error in treating the petitioner as sub-tenant of the defendants no.1 and 2 and evict him from the suit premises.

10. It is true that the trial Court has held that the defendant no. 3 is direct tenant of the plaintiff of Shed No. 6 on monthly rent of Rs.125/-. It is also held by the lower Appellate Court that the defendant no. 3 is sub-tenant of the machinery installed in the said shed. The plaintiff has let out said shed to the defendants no. 1 and 2 and not machinery. Hence, the defendant no. 3 is sub-tenant of the said shed only. The lower appellate Court has held that the trial Court has not committed any error in arriving at the conclusion that under the terms and conditions of tenancy contract permitting the defendants no. 1 and 2 to sublet the suit premises and that contract is contrary to law as envisaged under Section 15 (1) of the Bombay Rent Act. As such, sub-tenancy created by the defendants no. 1 and 2 in favour of the defendant no. 3 was in exercise of contractual right given by the plaintiff to the defendants no. 1 and 2 and sub-tenancy created by the defendants no. 1 and 2 in favour of the defendant no. 3 is lawful. It was also held by the lower appellate Court that protection u/s 14 of the Bombay Rent Act is not applicable or available to the petitioner. For attraction of Section 14 of the Bombay Rent Act it is necessary that sub-tenancy must have been created before 1959. In the present case, lawful sub-tenancy was created in favour of the defendant no. 3 by the defendants no. 1 and 2 after commencement of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1959 and consequently it is an essential factor for attracting the provisions of Section 14 of the said Bombay Rent Act which is lacking in this case. Hence the trial Court has erred in treating the defendant no. 3 as deemed tenant of the landlord u/s 14 of the said Rent Act. The lower appellate Court has also held and observed that it appears that the defendants no. 1 and 2 are making profit to the tune of Rs.40/- by subletting the suit premises to the defendant no. 3. On that ground the trial Court had decided that issue in the affirmative and held that the defendants no.1 and 2 are liable to be evicted from the suit premises on that ground. No doubt, the defendants no. 1 and 2 are making profit by subletting the shed to the defendant no. 3 but it was not a ground for eviction. It is necessary that the sub-tenancy should have been created before 1959. The

lower appellate Court has quashed and set aside that finding of the trial Court. The lower appellate Court has affirmed the finding of the trial Court that no rent was deposited by the defendants no. 1 and 2 during pendency of the trial Court and hence the defendants no. 1 and 2 are in arrears of rent for the aforesaid period and the defendants no. 1 and 2 were not ready and willing to pay the rent. The lower appellate Court has also observed that the defendants no. 1 and 2 are in arrears of rent for the aforesaid period and they are not ready and willing to pay or deposit the rent and they have not paid or deposited any rent during pendency of the suit proceedings before the trial Court. Hence, the trial Court was justified in holding that the defendants are liable for eviction on the ground of non-payment of rent u/s 12 of the Bombay Rent Act. It is also observed by the lower appellate Court that the trial was was not justified in holding that the the defendant no. 3 is protected u/s 14 of the Bombay Rent Act. Hence, he is not liable to be evicted. The lower appellate Court has further observed that the defendant no. 3 cannot become and does not become deemed tenant of the plaintiff u/s 14 of the Bombay Rent Act and hence that finding of the trial Court was set aside.

11. I have considered the arguments advanced by the learned counsel for the petitioner regarding protection of sub-tenancy u/s 14 of the Bombay Rent Act. Section 14 of the Bombay Rent Act provides that if any person is sub-tenant prior to enforcement of Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959, he will be deemed to be tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued. U/s 15 of the Bombay Rent Act, "subject to any contract to the contrary" and with regard to eviction the plaintiff-landlord had given right it shall not be any right to the defendant tenant to sublet directly allowing sub-tenancy was not unlawful within the meaning of Section 15 of the Bombay Rent Act.

12. I have carefully considered the relevant provision of the law. The words "but subject to any contract contrary" have been inserted in Section 15 of the Bombay Rent Act and shall be deemed always to have been inserted. Having regard to the said amendment in Section 15 and having regard to the eviction that the landlord had given right to the tenant to sublet the structure (premises) the sub-tenancy would not be unlawful within the meaning of Section 15 of the Bombay Rent Act. Proviso to Section 15 (1) of the Bombay Rent

Act provides that the State Government may by notification permit in any area the transfer of interest in premises held under such leases or class of leases and to such extent as may be specified in the notification. There are three modes of protection of sub-tenancy. The Bombay Rent Act gives mandate that no tenant will unlawfully sublet whole or any part of the premises or transfer in any manner his interest therein as provided in Section 13 (e) of the Bombay Rent Act. On the basis of analysis of Sections 14 and 15 of the Bombay Rent Act, there could be four folds classifications of contract or agreement between the land and tenant regarding tenancy, assignment or transfer to a third party; (i) If any sub-tenant to whom the premises or any part thereof has been lawfully sublet before commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959, will be deemed to be the tenant of the landlord on the same terms and conditions as he would have held the premises from his tenant if tenancy had continued. (ii) the contract within which expressly permitting the tenant to sublet their premises to third party, (iii) contracts which are silent on this aspect. (iv) contract which expressly contained covenant against subletting. So far as fist category of the contract is concerned by virtue of amendment made in 1959 which inserted expression "but subject to contract to the contrary" it is lawfully for a tenant to sublet, assign or transfer his premises to a third party. In such a case, the principal part of sub-sec. (1) of Sec. 15 with its except hold the field. So far as second category of contract is concern, where the contract is silent regarding sub-letting between the landlord and tenant, it shall not be lawful for a tenant to sub-let or assign or transfer his premises therein to any one. So far as third category is concerned the State Government has been empowered by the statute to issue notification in the official gazette permitting in any area transfer of interest in the premises held under such leases or class of leases as may be specified in the notification. Thus, the protection has been given by the Statute; (i) to the persons who held sub-tenancy prior to commencement of said Amendment Ordinary, 1959, (ii) express contract permitting sub-tenancy or assign or transfer and (iii) the notification by the State Government permitting subletting in any specified area in respect of particular type of leases or class of leases. No doubt, u/s 15 of the Bombay Rent Act, a sub-tenant is entitled to retain possession as sub-tenancy has been created by the contract. But in the present case, the petitioner defendant no. 3 is admittedly a subtenant of the defendants no. 1 and 2. The petitioner has stepped in

the shoes of the defendants no. 1 and 2 when the defendants have been directed to be evicted from the suit premises on the ground of non-payment of arrears of rent for more than six months. As such, the petitioner cannot be treated as independent tenant of the respondent plaintiff - landlord. Since the decree of eviction has already been passed against the defendants no. 1 and 2 for evicting the suit premises by the trial Court and that eviction decree has already been affirmed by the lower appellate Court, the defendant no. 3 is not entitled to be treated as tenant of the plaintiff and if the petitioner cannot be treated as a tenant of the respondent - plaintiff, the eviction decree passed by the lower appellate Court is fully justified.

13. Learned counsel for the petitioner last contended that petitioner falls within the definition tenant as provided in Section 5 (11) (a) of the Bombay Rent Act "such tenant and other persons have derived title under a tenant before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959. Hence the Courts below have committed error in not treating the petitioner as tenant within the meaning of tenant provided under the said Act. I have considered this contention of the learned counsel for the petitioner. But that contention has no substance in view of the fact that sub-tenancy is required to have recognised before commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959. There is nothing on record to show that sub-tenancy had already been acquired by the petitioner before commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959. As such, this contention raised by the petitioner is rejected.

14. Accordingly, I do not find any good ground calling for interference with the findings of the lower appellate Court in revision jurisdiction u/s 29 (2) of the Bombay Rent Act. Therefore, this civil revision application is dismissed. Rule is discharged, with no order as to costs. Ad-interim relief, if any, stands vacated forthwith.

(Kundan Singh, J.)
_/\/Satwara/